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Nos. 744 and 745

IN THE

Supreme Court of the United States

October Term, 1951

CHARLES SAWYER, SECRETARY OF COMMERCE,

Petitioner,

v.

THE YOUNGSTOWN SHEET AND TUBE COMPANY, ET AL.

BRIEF FOR THE UNITED STEELWORKERS OF AMERICA, CIO AS *AMICUS CURIAE* WITH REGARD TO THE ISSUANCE OF A STAY

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CONSENT TO FILE

This brief *amicus curiae* is filed pursuant to Rule 27 of the Court's Rules. The consent of all parties in each of these cases to the filing of this brief has been filed with the Clerk.

INTEREST OF THE UNION

The United Steelworkers of America, CIO (hereinafter called the Union), represents the employees of the steel companies who are parties to this case. Under the National Labor Relations Act, it is the exclusive representative of such employees for the purposes of collective bargaining in respect to "rates of pay, wages, hours of employment or other conditions of employment." This Court's disposition of the petitions for certiorari now before it will, of course, have a

significant effect upon the Union and its membership. But of immediate importance to the Union is the Court's decision as to the terms of a stay of execution of the order of the District Court. Decision on that issue will directly affect and can, indeed, completely destroy the Union's statutory responsibility to bargain for its membership.

THE ISSUE BEFORE THE COURT

Both the Government and the steel companies have petitioned this Court to grant a writ of certiorari. The only immediate issue between the parties is as to the terms of the stay of execution of the order of the District Court.

The Court of Appeals, after argument *en banc*, issued a stay of execution, which will expire if certiorari is granted by this Court. The Government, in its petition in No. 745, has applied to this Court for an order continuing that stay, in the event that certiorari is granted, until final disposition by this Court on the merits.

The companies, petitioners in No. 744, on the other hand, oppose the grant of any such stay. Furthermore, if a stay is issued, the companies request the Court, as they unsuccessfully did in the Court of Appeals, to include therein a provision preventing any changes in the terms and conditions of employment pending final disposition of the case. This brief is filed in opposition to this request of the companies.

ARGUMENT

I

If the Court should extend the stay of execution heretofore issued by the Court of Appeals but reverse that Court and modify the stay in the manner requested by the companies, the effect on the United Steelworkers of America and the employees whom it represents would be immediate and irreparable. It would place the employees in a position, for the duration of this litigation, much more disadvantageous than the position they would occupy if either the Government or the steel companies were eventually to prevail.

The contracts between the United Steelworkers of America and the steel companies involved here expired on December

31, 1951. From that date, the Union was free to bargain with the employers as to all matters concerning wages and conditions of employment. The Union did not lose this right when the Secretary of Commerce, acting in the name of the United States, seized the properties of these companies. If this seizure was valid, the Union and its members had the right to deal with their employer, the United States, as to conditions of employment. If this seizure is to be terminated and the properties of the companies returned, the Union and its members will have the right to bargain with their employers—the companies. Regardless of who is in possession of the properties involved, the Union would have the right and, indeed, the duty to negotiate concerning not only wages but also all of the myriad factors comprehended under the words "conditions of employment."

The modification of the stay order requested by the companies would destroy that right. If granted, the Union would be rendered impotent to bargain with its current employer. The employer, under the terms of the stay order, would be the Government. But the employer would be forbidden to perform the essential attributes of his position with respect to his employees.

If the stay order is granted in the form requested by the Government, the Union can bargain with the Government. If, as the companies request, it is denied completely, the employees can bargain with the steel companies. But if the stay order is granted but modified as the companies request, the Union will have no employer with which it can bargain. It would thus be deprived of rights which it would have if the companies prevail and rights which it would have if the Government prevails. It would be left, in short, in the middle and holding the bag.

Contrariwise, of course, the effect of a stay modified as requested by the companies would be to place the companies in a position more favorable than any they could achieve if the litigation were finally determined in their favor. The position of the companies from the beginning has been that there should be no change in wages or working conditions. The dispute with the Union arose from the Union's proposals

for increases in wages and changes in working conditions. The issuance of a stay order, conditioned as requested by the companies, now would have the effect of requiring the Government to enforce for the duration of this litigation the entire position of the companies.

We respectfully suggest to this Court that the companies are suggesting action to the Court which would constitute an intervention on the side of the companies in their dispute with the Union. It would give the companies temporary relief both against a strike and against an increase in wages, relief which the companies will have no right to receive even if they are completely successful in this litigation. And it will give the companies this relief at the sole expense of the employees whom the Union represents.

The companies assert that the *status quo* should be maintained. But a stay order modified as requested by the companies would not preserve the *status quo*. It would effectively destroy the Union's right to bargain on wages—a right which the Union possessed before the seizure, which it possessed after the seizure and which it will possess when this litigation is terminated. Judge Pine's order did not destroy that right. A stay of that order will not destroy it. But an order that no changes in wages and working conditions be made *pendente lite* will destroy it. It will maintain the status of the companies by destroying the status of the Union. This is hardly a maintenance of the *status quo*.

II

We have shown, we think, that the insertion in the stay of the condition sought by the steel companies, that the Secretary of Commerce be prohibited from effecting changes in the terms and conditions of employment in the steel plants, would be both unjust and highly injurious to the workers and to the Union. The steel companies, we submit, have not shown that they would suffer any comparable injury, or, indeed, any injury at all if the stay were continued on its present terms.

The steel companies assert that unless the stay is modified as they request, they will suffer irreparable injury because

(1) their funds may be used to pay increased wages and other benefits; (2) they will have no remedy against the Government for this injury; and (3) they will suffer damages not susceptible of monetary measurement because their bargaining position with the Union will be adversely affected.

As to the first of these assertions, it seems to rest on the steel companies' assumption that if the Government had not seized the plants, those plants would nevertheless still be in operation. The events of the last few days should have made it clear, even to the steel companies, that this assumption is erroneous. But for the seizure the steel mills would be closed, as they were during the period between Judge Pine's decision and the Court of Appeals' issuance of its stay.

The steel companies have not shown, and quite obviously cannot show, that they would be worse off financially with their plants operating under wages and working conditions agreed to between the Government and the Union than they would be with their plants struck because of the refusal of the workers to continue to work under the 1950 wages and working conditions. It is true that Judge Pine, in the course of his opinion, asserted, "and without burdening this opinion with the recital of facts, that the damages are irreparable" (R. 85). Several comments may be made with regard to this "finding":

(1) Judge Pine went on to say that he doubted whether the finding was necessary anyway since in his opinion the Government's actions were illegal (R. 85).

(2) Judge Pine assumed that if the mills were turned back to the steel corporations the workers would continue to work under 1950 wages and working conditions (R. 86).

That assumption was wrong. Events showed that the Government was correct in asserting that the alternatives were either operation by the Government with power to negotiate current wages and working conditions, or no operation. Assuming these to be the alternatives, as we must, the companies have shown no damage.

At least four members of this Court have indicated their agreement with this position. In his dissenting opinion in

the Court of Claims in the *Pewee Coal Case*, Judge Madden declared:

> "This extra expense consisted of an increased vacation allowance to the plaintiff's workmen, and the refund to them of occupational charges like rentals on mine lamps. The court has not found that the plaintiff [company] could have operated its mine without making the concessions directed by the War Labor Board, nor has it found what the losses to the plaintiff would have been if the Government had not intervened and the strike had continued. I think that the court is not justified in awarding the plaintiff the amount of these expenditures when it does not and, I think, could not, find that the plaintiff was, in fact, financially harmed by the Government's acts." 88 F. Supp. at page 431, 115 Ct. Cl. at pages 678-679.

In this court, the four dissenting judges explicitly declared their agreement with these views. 341 U. S. 114, at 122. Mr. Justice Reed disagreed. The opinion of the remaining four members of the court rested on another ground and did not indicate their views on this subject.

(3) A reading of Judge Pine's opinion conveys the over-all impression that the injury which really moved Judge Pine to issue the injunction was not the supposed financial injury to the steel companies but the alleged injury to the public "which would flow from a timorous judicial recognition that there is some basis for this claim" that the Government had power to seize the mills (R. 86).

(4) Finally, Judge Pine refused to issue just the sort of order which the companies are now proposing, viz. leaving the Government in nominal possession but forbidden to make any changes in the terms and conditions of employment. One of the companies had requested Judge Pine to issue such an order but he declared that he was unwilling to do so because of "its stultifying implications" (R. 86).

With the companies' assertion that they have no adequate remedy against the United States for the damages they will suffer we shall not deal, first, because it is clear that they

will suffer no damages, and, second, because this contention is more appropriately dealt with by the Government.

The steel companies' final assertion with respect to their supposed injuries is that they will suffer damages not susceptible to monetary measurement because their bargaining position viz-a-viz the Union when the plants are returned to them may be injured by any changes in wages or working conditions made by the Government during the period of Government possession. The short answer to this argument is that when the mills are restored to their possession they will have the right and it will again be their duty to bargain with the Union concerning the then current wages and working conditions. The assertion that their relative bargaining position may be detrimentally affected by the wages and working conditions which have been in effect between the Government and the Union in the meantime is a tenuous and speculative basis for asking this court to deprive the Union of all right to bargain with its employer during the period of this litigation.

Respectfully submitted,

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